

MAR 11 1983

No. 82-1221

IN THE

ALEXANDER STEVAS,  
CLERK

**Supreme Court of the United States**

OCTOBER TERM, 1982

JEAN S. HARRIS,

*Petitioner,*

-vs.-

THE PEOPLE OF THE STATE OF NEW YORK,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
COURT OF APPEALS FOR THE STATE OF NEW YORK

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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**A. The Constitutional Issues**

The Respondent has not addressed the novel issues raised by Jean Harris in her Petition for Certiorari in the constitutional context of a defendant's right to speak privately with her lawyer in the place of confinement. The cases they cite deal with the separate issues of what constitutes "interrogation" (*Rhode Island v. Innis*, 446 U.S. 291, 300); a police officer's right to remain "at the elbow" of a defendant in custody (*Washington v. Chrisman*, U.S. 70 L. Ed.2d 778); and what constitutes a valid waiver of counsel (*Edwards v. Arizona*, 451 U.S. 477). If Jean Harris' inculpatory remarks had been made to a

police officer these cases might have some bearing but that is not the issue in this case. Jean Harris was talking to her lawyer after having invoked her right to counsel and the incriminatory statements made to her attorney were used against her to convict her of murder. No case decided by this Court covers that situation.

What Respondent seems to say is that a person in custody with a police officer "at her elbow" has no constitutional right to privately seek the advice of a lawyer and make confidential statements to her counsel at any point within the place of lawful confinement. If that is Respondent's position it would seem to escalate the importance of the leading question presented by this Petition. If law enforcement officers are free to overhear, either inadvertently or deliberately, statements made by a defendant to her attorney it will be an open invitation for police officers to stay "at the elbow" of defendants in custody and overhear what they say and use it against them. Under the sixth amendment, Petitioner had every right to assume, once she invoked her right to confer with her attorney, that nothing she said to him would be used against her. Thus, the State should be barred from using those confidential communications in a criminal trial against the Petitioner. For these reasons Petition for Certiorari should be granted.

### **B. The Timeliness Issue**

Respondent's only answer to the untimeliness of the Petition is that untimeliness may not be cured absent an "application for extension of time" brought in the manner prescribed by Rules 20.6, 29, 42 and 43. But this is not a problem in seeking an application for extension of time. And none of the rules cited by Respondent has anything to do with Petitioner's extraordinary request, which is a plea to the Court that it waive the timely filing requirements of Rule 20.1, in the interests of justice. That means justice to the Petitioner herself and the major constitutional issues presented by her murder conviction. Justice in this context is not to be dispensed or granted because of counsel's "heavy professional commitments," but because of

the necessity to correct what may be perceived as a miscarriage of constitutional justice to Jean Harris. This Court has the discretionary power to overlook an untimely filing in a criminal case whatever the reason for the untimeliness.

Insofar as the procedure followed in bringing this problem of punctuality to the Court's attention, Petitioner followed "the most appropriate way" suggested by the Clerk's Office. That procedure is described in R. Stern and E. Gressman, *Supreme Court Practice*, 395 (5th Ed., 1978):

"The Clerk's Office suggests that the most appropriate way to handle this problem is in the body of the Petition for Certiorari, without filing a separate motion or leave to file an out-of-time petition; the matter can be discussed under the heading "Jurisdiction" or under a separate heading in the Petition such as "Timeliness of Filing."

For these various reasons, this Petition for a Writ of Certiorari to review the judgment of the New York Court of Appeals should be granted.

Respectfully submitted,

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March 10, 1983